

REMARKS

Favorable consideration of this application, in light of the present amendment and following discussion, is respectfully requested.

After entry of the foregoing amendment, Claims 37-40 are pending in the present Application. Claim 37 has been amended to address cosmetic matters of form. No new matter has been added.

By way of summary, the Official Action presents the following issues: Claims 37-40 stand provisionally rejected under the judicially created Doctrine of Obviousness-type Double Patenting; and, Claim 37 stands rejected under 35 U.S.C. § 101 allegedly being directed to a recording medium storing nonfunctional descriptive material.

Applicants appreciatively acknowledge the identification of allowable subject matter.

DOUBLE-PATENTING REJECTION

The Official Action has provisionally rejected Claims 37-40 under the judicially created Doctrine of Obviousness-type Double Patenting over Claims 17-20 of co-pending Application Serial No. 10/172,929.

In response, Applicants have filed herewith a Terminal Disclaimer. Accordingly, Applicants respectfully request that the double-patenting rejection be withdrawn.

The filing of a Terminal Disclaimer to obviate a rejection based on nonstatutory double patenting is not an admission of the propriety of the rejection. The "filing of a Terminal Disclaimer simply serves the statutory function of removing the rejection of double patenting, and raises neither a presumption nor estoppel on the merits of the rejection." Quad Environmental Technologies Corp. v. Union Sanitary District, 946 F.2d 870, 20 U.S.P.Q.2d 1392 (Fed. Cir. 1991). Accordingly, Applicants filing of the attached disclaimer is provided

for facilitating a timely resolution to prosecution only, and should not be interpreted as an admission as to the merits of the obviated rejection.

REJECTION UNDER 35 C.F.R. § 101

The Official Action has rejected Claim 37 under 35 C.F.R. § 101 allegedly being directed to a recording medium storing nonfunctional descriptive material.

Claim 37 has been amended to recite the interrelationship of the medium to a recording/reproducing apparatus. Accordingly, it is respectfully requested that this rejection be withdrawn.

MPEP § 2106 discusses statutory subject matter in relation to data structures of a computer readable medium. Particularly, MPEP § 2106 provides:

**a claimed computer-readable medium encode with a data structure defines structural and functional interrelationships between the data structure and the computer software and hardware components which permit the data structures functionality to be realized, and is thus statutory.**

Thus, based on the clear language of this Section, Claim 37 is statutory as it defines a functionality of which is realized based on the interrelationship of the structure to the medium and recited hardware components.

Further, should the Examiner disagree with the above passage, MPEP § 2106 also states that:

Whenever practicable, Office personnel should indicate how rejections may be overcome and how problems may be resolved. A failure to follow this approach can lead to unnecessary delays in the prosecution of the application.

Applicants respectfully submit, as noted above, that the rejection under 35 U.S.C. § 101 should be withdrawn. However, if the rejection under 35 U.S.C. § 101 is to be maintained, Applicants respectfully request that the Examiner provide an explanation of the rejection in view of the guidelines of MPEP § 2106.

CONCLUSION

Consequently, in view of the foregoing amendment and remarks, it is respectfully submitted that the present Application, including Claims 37-40, is patently distinguished over the prior art, in condition for allowance, and such action is respectfully requested at an early date.

If the Examiner believes that any additional formal matters need to be addressed in order to place this Application in condition for allowance, the Examiner is respectfully requested to contact the undersigned by telephone at the Examiner's convenience.

Respectfully submitted,

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